

EXHIBIT A

**COHEN SEGLIAS PALLAS
GREENHALL & FURMAN, P.C.**

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237 King Partners, LLC
a/k/a 237 East King Partners, LLC*

**237 KING PARTNERS, LLC, a/k/a 237 EAST
KING PARTNERS, LLC.**

Claimant,

V.

BOZZUTO CONSTRUCTION COMPANY,

Respondent.

ARBITRATION

before

The Honorable James F. Proud

STATEMENT OF CLAIM

Claimant, 237 King Partners, LLC, a/k/a 237 East King Partners, LLC (“Owner”), by and through its undersigned counsel, Cohen Seglias Pallas Greenhall & Furman P.C., and pursuant to the Scheduling Order entered in this Arbitration, hereby files this Statement of Claim and states as follows:

I. Introduction

In this Arbitration, Owner seeks recovery in excess of \$3,800,000.00 for damages suffered from the failure of Respondent, Bozzuto Construction Company (“Bozzuto”), to construct the Eastside Flats apartment complex in accordance with the parties’ contract. Bozzuto’s failures include but are not limited to improper installation of the waterproofing membrane on each of the three rooftop terraces at the complex, use of improper materials, and the failure to install two-stage drains in accordance with the project plans and specifications. As a result of Bozzuto’s actions and

inactions, Owner has been forced to contend with water intrusion throughout the property and has suffered damage to the property. Further, Owner has been forced to expend significant time and resources to investigate and remedy the damage, and will continue to incur expenses as it completes the necessary remedial work.

II. Factual Background

This matter arises from a construction contract entered into on or about February 24, 2012 (the “Contract”) between Owner and Bozzuto for the construction of the Eastside Flats apartment complex (the “Project”), located at 237 East King Street, Malvern, Pennsylvania 19355 (the “Property”). The Project involved the construction of a four-story mixed-use complex comprising of two independent structures that include 190 apartment units over approximately 30,000 square feet of retail space, a two-story parking garage, and three elevated terrace courtyards. Bozzuto was the general contractor for the Project. The Contract required Bozzuto to perform its work at the Project in accordance with the Contract documents—including the plans and specifications.

The plans and specifications required Bozzuto to properly install an appropriate waterproofing membrane in accordance with the manufacturer’s instructions. The plans and specifications also required Bozzuto to install two-stage drains throughout each of the three terraces.

Bozzuto failed to perform its work in a workmanlike manner and in accordance with the plans and specifications. As a result, Owner began to experience water intrusion into both buildings that was capable of being observed with the naked eye. The water intrusion continues to this day. The water intrusion flows from the three exterior terrace-courtyard common areas and has caused damage to several portions of the Project including but not limited to the parking garage

structure. Owner has been forced to incur and will continue to incur significant expenses to investigate and remediate Bozzuto's defective work.

III. Claim and Damages

Bozzuto materially breached the parties' Contract by failing to construct the Project in accordance with the plans, specifications, and manufacturers' instructions.¹ Bozzuto's failures and nonconforming work include but are not limited to the following:

- Failure to install two-stage drains as required by the Contract documents, resulting in active leaks at the Property.
- Failure to properly install an appropriate waterproofing membrane in accordance with the plans and specifications and manufacturer's instructions, resulting in:
 - voids and moisture trapped below the membrane;
 - adhesive failure of the membrane at vertical wall terminations;
 - residual water behind brick base of building exterior; and
 - water intrusion into the parking garage structure.
- Failure to perform the proper repairs on the defective waterproofing and installation—creating additional construction failures and additional expense to Owner.
- Improper installation of poured concrete over drains in the structural concrete slab.

Upon discovery of the construction defects, demand was made upon Bozzuto by Owner to correct and cure the defects; however, Bozzuto failed to do so. The water intrusion has resulted in degraded conditions both on the terrace decks themselves and in the parking garage below. Additionally, the water intrusion has resulted in complaints and leasing issues with residents of

¹ Owner also asserts, in the alternative, quasi-contract theories (unjust enrichment, quantum meruit, etc.) entitling it to recovery of the same damages.

the complex for loss of use of balconies, the terrace areas, and parking. As of the date of this statement, Owner has incurred consultant costs in the amount of \$43,191.49, which continue to accrue, and costs to reimburse residents for damages to their vehicles of at least \$6,080.81. In addition, it is estimated that Owner will incur costs in the amount of at least \$3,788,412.00 to complete the remedial work.²

Because Bozzuto failed to construct the Project in accordance with the Contract documents, and failed to correct its defective work despite Owner providing notice and opportunity to cure, Owner is entitled to recover the above damages pursuant to the Contract. Owner reserves the right to amend and/or supplement this Statement as additional information becomes available to it through the course of discovery.

IV. Relief

For the reasons set forth above, Owner respectfully requests an award in its favor in the amount of at least \$3,837,684.30. Owner reserves all rights and remedies available to it, including but not limited to supplementation of its damages demand.

Respectfully submitted,

**COHEN SEGLIAS PALLAS
GREENHALL & FURMAN, PC**

BY: /s/ Lane F. Kelman
Lane F. Kelman, Esquire
Cody M. Wolpert, Esquire
Attorneys for Claimant

Dated: June 23, 2022

² As of the date of this Statement, remedial work at the Project is ongoing, and the sum of Owner's costs incurred to complete the remedial work is subject to change.

CERTIFICATE OF SERVICE

I, Lane F. Kelman, Esquire, hereby certify that on June 23, 2022, I caused a true and correct copy of the foregoing *Statement of Claim* to be served upon the following via electronic mail:

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